

State of Missouri Office of Secretary of State

Case No. AP-07-41

IN THE MATTER OF:

Stephen M. Coleman,
Daedalus Capital, LLC,
Chicken Little Fund Group,
Daedalus ALPHA Inc., and
ALPHA Strategy Fund, L.P.,

Respondents.

FINAL ORDER TO CEASE AND DESIST AND ORDER IMPOSING CIVIL PENALTIES AND COSTS AS TO ALL RESPONDENTS

On December 12, 2008, the Enforcement Section of the Securities Division (“Enforcement Section”), by and through its Chief Enforcement Counsel, Lori J. Neidel, submitted a Petition For Final Order to Cease and Desist and Payment of Civil Penalties and Costs as to all Respondents (the “Petition for Final Order”). After reviewing the Petition for Final Order, the Commissioner issues the following findings of fact, conclusions of law, and order:

1. On October 25, 2007, the Commissioner issued an Order to Cease and Desist and Order to Show Cause Why Civil Penalties and Costs Should Not Be Imposed in this matter (the “C&D Order”).
2. A pre-hearing conference in this matter was held on January 17, 2008. Ms. Neidel appeared in person on behalf of the Enforcement Section. Larry D. Coleman appeared by telephone on behalf of all Respondents.
3. During the pre-hearing conference, both Ms. Neidel and Respondents’ counsel Mr. Coleman requested that the hearing in this matter be continued to accommodate scheduled depositions and discovery matters. The hearing was continued to March 27, 2008.
4. On March 20, 2008, Ms. Neidel requested a continuance of the hearing on behalf of the Enforcement Section, and stated that discovery in this matter was ongoing and would not be completed before the March 27, hearing date.
5. On March 26, 2008, the Commissioner ordered the hearing in this matter continued to May 15, 2008.
6. On May 13, 2008, the Commissioner entered an Order on Motions which addressed several outstanding matters and in which the Commissioner ordered the hearing in this matter continued to June 26, 2008.

7. On June 17, 2008, the Enforcement Section, through Chief Counsel to the Securities Division Patrick Morgan, filed Petitioner's Motion for Continuance. In this motion, the Enforcement Section cited as reasons for its request a need to complete review of documents provided by the Respondents, a need to request further discovery as a result of the Respondents' latest discovery response, and a need to amend its petition to encompass all outstanding issues.
8. On June 25, 2008, the Commissioner entered an Order of Continuance which continued the hearing in this matter to August 21, 2008:
9. On August 1, 2008, Ms. Neidel submitted a Motion for a Pre-Hearing Conference, and on August 12, 2008, Ms. Neidel submitted Petitioner's Motion for Continuance [*sic*] (the "Continuance Motion"). In the Continuance Motion, Ms. Neidel stated that Mr. Wagner, the Enforcement Section's Special Investigator who had conducted much of the investigation in this matter, had been called to National Guard duty for a period which included the scheduled hearing date.
10. The pre-hearing conference requested by Ms. Neidel was held on August 18, 2008, with Ms. Neidel appearing in person and Respondents' counsel Mr. Coleman appearing by telephone on behalf of the Respondents. The Continuance Motion was discussed at that time, as were dates to which the hearing could be continued. Counsel for all parties agreed that October 23, 2008, was the nearest and most acceptable date to which the hearing could be continued.
11. On August 25, 2008, the Commissioner entered an Order of Continuance which continued the hearing in this matter to October 23, 2008.
12. On August 27, 2008, the Commissioner entered an Amendment to Order to Cease and Desist and Order to Show Cause Why Civil Penalties and Costs Should Not Be Imposed ("Amended C&D Order").
13. On October 17, 2008, Respondents, through their counsel Mr. Coleman, filed a Motion to Enforce Discovery and Alternatively for Sanctions (the "October Motion"). In the October Motion, Respondents also requested a continuance.
14. On October 21, 2008, the Petitioner, through Ms. Neidel, filed Objections to Respondents' Motion to Enforce Discovery and Alternatively for Sanctions (the "Objections"). In the Objections, Petitioner stated that it would be prejudiced by a delay in the hearing.
15. A status conference was held on October 21, 2008, concerning the Respondents' request for a continuance. During the status conference, Respondents noted that this was their first request for continuance, that they had not received requested discovery until October 16, 2008, and that they had not completed a deposition of Mr. Wagner. During the status conference, the Petitioner objected to a continuance and stated that it had provided all requested discovery in a timely fashion and that Respondents had ample opportunity to depose Mr. Wagner.
16. On October 23, 2008, the Commissioner entered an Order of Continuance continuing the hearing in this matter to December 1, 2008, to allow Respondents to prepare and take the deposition of Mr. Wagner.

17. On November 13, 2008, Respondents' counsel Mr. Coleman submitted a Notice to Take Deposition which provided notice of a deposition scheduled for Mr. Wagner on November 19, 2008.
18. On November 18, 2008, Respondents' counsel Mr. Coleman sent an email to the Commissioner stating that Respondents were canceling the deposition of Mr. Wagner and would not appear at the scheduled time for the same. Further, Mr. Coleman's email stated that he was uncertain whether "anyone will appear" for the scheduled hearing in this matter.
19. On November 19, 2008, the Commissioner conducted a status conference with Petitioner's counsel present and Respondents' counsel appearing by telephone to discuss whether Respondents would be participating in the hearing scheduled for December 1, 2008.
20. On November 21, 2008, Respondents, through their counsel Mr. Coleman, submitted to the Commissioner a Notice of Withdrawal of Hearing Request (the "Withdrawal").
21. Respondents' Withdrawal, coupled with the Enforcement Section's Petition for Final Order, eliminates the need for a hearing in this matter.
22. In the Petition for Final Order, the Enforcement Section requested that the Commissioner order Respondents Stephen M. Coleman and Daedalus Capital, LLC, to cease and desist from violations of Section 409.3-301, 409.5-501 and 409.5-502, RSMo. (Cum. Supp. 2007).
23. In the Petition for Final Order, the Enforcement Section requested that the Commissioner impose a series of civil penalties pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2007), against each of Respondent Stephen M. Coleman and Respondent Daedalus Capital, LLC, for violation of various "Counts" which were otherwise unattributed but presumably those contained in Petitioner's Amended Petition For Order to Cease and Desist and Show Cause Why Civil Penalties and Costs Should Not Be Imposed (the "Amended Petition"). The Enforcement Section requested a civil penalty of one thousand dollars (\$1,000) for each count alleging a single violation, but did not request a specific amount for counts alleging multiple violations, instead requesting an amount "up to" the statutory maximum.
24. In the Petition for Final Order, the Enforcement Section requested that the Commissioner impose a civil penalty pursuant to Section 409.4-412(c), RSMo. (Cum. Supp. 2007), against each of Respondent Stephen M. Coleman and Respondent Daedalus Capital, LLC, for violation of Section 409.4-412(d)(2), RSMo. (Cum. Supp. 2007), but did not request a specific amount. The Amended Petition does not reference Section 409.4-412, RSMo. (Cum. Supp. 2007), does not allege a violation of that section, or otherwise address the "willful" component of Section 409.4-412(d)(2), RSMo. (Cum. Supp. 2007).
25. In the Petition for Final Order, the Enforcement Section requested that the Commissioner order each "individual" Respondent to pay the costs of the investigation in this matter of fourteen thousand three hundred fifty dollars (\$14,350), and that such Respondents be jointly and severally liable for this amount.

26. Respondents have not submitted any response to the Petition for Final Order.
27. This Order is in the public interest and is consistent with the purposes intended by the Missouri Securities Act of 2003. See Section 409.6-605(b), RSMo. (Cum. Supp. 2008).

ORDER

NOW THEREFORE, it is hereby **ORDERED** that:

- A. The Cease and Desist Order entered in Case Number AP-07-41 on October 25, 2007, as amended on August 27, 2008, is **FINAL** as to all Respondents in this matter.
- B. Pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2007), Respondent Stephen M. Coleman shall pay a civil penalty in the amount of two thousand dollars (\$2,000) to the State of Missouri for multiple violations of Section 409.3-301, RSMo. (Cum. Supp. 2007). This amount shall be made payable to the State of Missouri and paid within thirty (30) days of the date of this Order. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. Respondents shall deliver this payment to the Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, Missouri 65102.
- C. Pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2007), Respondent Stephen M. Coleman shall pay a civil penalty in the amount of six thousand dollars (\$6,000) to the State of Missouri for multiple violations of Section 409.5-501, RSMo. (Cum. Supp. 2007). This amount shall be made payable to the State of Missouri and paid within thirty (30) days of the date of this Order. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. Respondents shall deliver this payment to the Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, Missouri 65102.
- D. Pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2007), Respondent Stephen M. Coleman shall pay a civil penalty in the amount of five thousand dollars (\$5,000) to the State of Missouri for multiple violations of Section 409.5-502, RSMo. (Cum. Supp. 2007). This amount shall be made payable to the State of Missouri and paid within thirty (30) days of the date of this Order. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. Respondents shall deliver this payment to the Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, Missouri 65102.
- E. Pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2007), Respondent Daedalus Capital, LLC, shall pay a civil penalty in the amount of two thousand dollars (\$2,000) to the State of Missouri for multiple violations of Sections 409.3-301, RSMo. (Cum. Supp. 2007). This amount shall be made payable to the State of Missouri and paid within thirty (30) days of the date of this Order. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. Respondents shall deliver this payment to the Securities Division, 600 W. Main Street, PO Box

1276, Jefferson City, Missouri 65102.

- F. Pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2007), Respondent Daedalus Capital, LLC, shall pay a civil penalty in the amount of five thousand dollars (\$5,000) to the State of Missouri for multiple violations of Sections 409.5-501, RSMo. (Cum. Supp. 2007). This amount shall be made payable to the State of Missouri and paid within thirty (30) days of the date of this Order. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. Respondents shall deliver this payment to the Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, Missouri 65102.
- G. Pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2007), Respondent Daedalus Capital, LLC, shall pay a civil penalty in the amount of four thousand dollars (\$4,000) to the State of Missouri for multiple violations of Sections 409.5-502, RSMo. (Cum. Supp. 2007). This amount shall be made payable to the State of Missouri and paid within thirty (30) days of the date of this Order. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. Respondents shall deliver this payment to the Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, Missouri 65102.
- H. Pursuant to Section 409.6-604(e), RSMo., Respondents Stephen M. Coleman and Daedalus Capital, LLC, shall pay, within thirty (30) days from the date of this Order, the additional sum of fourteen thousand three hundred and fifty dollars (\$14,350) as reimbursement for the costs of the investigation and administration of this matter. Respondents Stephen M. Coleman and Daedalus Capital, LLC, shall be jointly and severally liable for this amount. This amount shall be made payable to the Missouri Secretary of State's Investor Education and Protection Fund. Respondents shall deliver this payment to the Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, Missouri 65102.
- I. Pursuant to Section 409.6-604(f), RSMo. (Cum. Supp. 2007), this matter shall be referred to the Missouri Attorney General's Office to collect the fines and costs described in this Order, as necessary.
- J. All Respondents shall pay their own costs and attorneys' fees with respect to this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,
MISSOURI THIS 30TH DAY OF JANUARY, 2009.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI
COMMISSIONER OF SECURITIES

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January, 2009, copies of the foregoing Order and Notice in the above styled case was **mailed by certified U.S. Mail, postage prepaid, to:**

Larry D. Coleman
8801 E. 63rd Street, \$208
Raytown, MO 64133
ATTORNEY FOR RESPONDENTS

And hand delivered to:

Lori Neidel
Chief Enforcement Council
Securities Division

John Hale, Specialist